



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

HAROLD SMITH,  
Plaintiff,

vs.

ALBERTO GONZALES,  
Defendant.

§  
§  
§  
§  
§  
§  
§

CIVIL ACTION NO. 6:04-1188-HFF-WMC

---

---

ORDER

---

---

This is a federal prison conditions action. Plaintiff is proceeding *pro se*. The matter is before the Court for review of the November 2, 2005, report and recommendation (Report I ) and the November 15, 2005, report and recommendation (Report II) of the United States Magistrate Judge. The Reports are made in accordance with 28 U.S.C. § 636 and Local Rule 73.02 for the District of South Carolina. The Court must determine whether to grant Plaintiff's motion for a new trial.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Matthews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a *de novo* determination of those portions of the report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

*A. Report I*

In Report I, the Magistrate Judge suggests that Plaintiff's motions for injunctive relief and default judgment be denied. Plaintiff mailed his objections to the Clerk's Office on November 8, 2005. The Court has made a *de novo* review of those portions of the report to which Plaintiff objects but finds those objections to be without merit. Simply stated, and as observed by the Magistrate Judge, "[P]laintiff here has offered no evidence that he is being subjected to treatment that would warrant the extreme remedy of injunctive relief." (Report I at 2). Moreover, the Court finds that there exists no proper basis in the record for the granting of Plaintiff's motion for default judgment. Therefore, the Court will overrule Plaintiff's objections.

Therefore, after a thorough review of Report I and the record in this case pursuant to the standards set forth above, the Court overrules Plaintiff's objections, adopts Report I and incorporates it herein. Therefore, it is the judgment of this Court that Plaintiff's motions for injunctive relief and default judgment must be **DENIED**. Plaintiff's "motion for court excusement of Rule 65(c) requirement is, thus, rendered, **MOOT**."

*B. Report II*

In Report II, the Magistrate Judge recommends that the Court not issue service of process for the United States of America, property owner, through its representative Alberto Gonzales, and that the Court summarily dismiss this action against Defendant United States of America. Plaintiff mailed his thirteen page (including exhibits) objection memorandum to the Clerk of Court on November 25, 2005. The Court has made a *de novo* review of those portions of the report to which Plaintiff objects, but finds Plaintiff's arguments to be unpersuasive. Therefore, for the reasons stated

in the Magistrate Judge's comprehensive and well-reasoned report, the Court will summarily dismiss this action as against Defendant United States of America, without issuance and service of process.

Therefore, after a thorough review of Report II and the record in this case pursuant to the standards set forth above, the Court overrules Plaintiff's objections, adopts Report II and incorporates it herein. Therefore, it is the judgment of this Court that this case must be **DISMISSED** as against Defendant United States of America, without issuance and service of process. All remaining pending non-dispositive motions are, thus, rendered **MOOT**.<sup>1</sup>

*C. Motion for a new trial*

On April 18, 2005, Plaintiff filed a motion for a new trial. Because the Court is unable to find that there exists an appropriate basis in the record for granting such a request, that motion must be **DENIED**.

**IT IS SO ORDERED.**

Signed this 6th day of December, 2005, in Spartanburg, South Carolina.

s/ Henry F. Floyd  
HENRY F. FLOYD  
UNITED STATES DISTRICT JUDGE

\*\*\*\*\*

**NOTICE OF RIGHT TO APPEAL**

Plaintiff is hereby notified that he has the right to appeal this Order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

---

<sup>1</sup>Even if the Court did not find that these motions are moot, it would deny them since Plaintiff has presented no legal basis on which they can be properly granted.